

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROBERT GARZA,

Petitioner,

vs.

BRAD HANSEN,

Respondent.

**8:19CV392**

**MEMORANDUM  
AND ORDER**

Petitioner filed a Petition for Writ of Habeas Corpus ([filing no. 1](#)) on September 6, 2019. This matter is before the court on Petitioner's Motion for Leave to Proceed in Forma Pauperis ([filing no. 3](#)) and Request for Bail Pending Review ([filing no. 5](#)).

**I. MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

Habeas corpus cases attacking the legality of a person's confinement require the payment of a \$5.00 filing fee. [28 U.S.C. § 1914\(a\)](#). However, after considering Petitioner's financial status as shown in the records of this court (*see* inmate trust account statement at [filing no. 6](#)), leave to proceed in forma pauperis will be granted and Petitioner is relieved from paying the filing fee. *See* [28 U.S.C. § 1915\(a\)\(1\)](#).

**II. REQUEST FOR BAIL PENDING REVIEW**

Petitioner asks this court to release him on bail pending review of his § 2241 habeas petition. Federal district courts have the inherent power to grant state prisoners bail during the pendency of a federal habeas corpus proceeding. *See Martin v. Solem*, [801 F.2d 324, 329–30 \(8th Cir. 1986\)](#). However, such power can

be exercised only in exceptional cases and where special circumstances exist. *See id.*

Petitioner argues the following in support of his request for bail:

1. Petitioner's conviction is not final, and he is still considered an "accused" with all the rights provided by the Sixth Amendment, including his right to a speedy trial. *U.S. v. Haymond supra.*
2. Petitioner has been incarcerated for nearly 36 years pursuant to a sentence without a valid judgment of conviction.
3. A sentencing order that is not preceded by a valid judgment of conviction is not a final, appealable order. *State v. Rieger supra.*
4. Petitioner is not a flight risk, and the circumstances of the case indicates that he is not a threat to the community.

([Filing No. 5.](#)) The court finds that Petitioner has not presented exceptional circumstances warranting bail pending disposition of his habeas corpus petition. Accordingly, Petitioner's request for bail will be denied.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed in Forma Pauperis ([filing no. 3](#)) is granted.
2. Petitioner's request for bail ([filing no. 5](#)) is denied.
3. Petitioner is advised that the next step in this case is for the court to conduct a preliminary review of the habeas corpus petition in accordance with Rule 4 of the Rules Governing Section 2254 cases. The court will conduct this review in its normal course of business.

Dated this 17th day of October, 2019.

BY THE COURT:

*s/ Richard G. Kopf*

Senior United States District Judge